

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILLIAM BERRY,

Plaintiff,

v.

MERRICK GARLAND, in his official capacity
as Attorney General of the United States of
America,

Defendant.

Civil Action No. _____

Jury Trial Demanded

COMPLAINT

Plaintiff, William Berry (“Mr. Berry”), by and through his undersigned attorneys, brings this Complaint against the United States Department of Justice (“Defendant”) and alleges as follows:

I. NATURE OF THIS ACTION

1. This case is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

II. JURISDICTION, VENUE, & EXHAUSTION OF ADMINISTRATIVE REMEDIES

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

3. The United States District Court for the District of New Mexico is a proper venue for this action because Defendant maintains a place of business in this judicial district and the acts/omissions alleged in this complaint occurred in this District. *See* 28 U.S.C. § 1391(b).

4. Mr. Berry exhausted his administrative remedies by contacting an EEO counselor (January 13, 2023) with 45 days of first learning (January 6, 2023) that the FBI sought to terminate his employment.

5. Neither Mr. Berry nor his lawyers ever received a final decision on his complaint, and more than 180 days have passed since he filed the complaint.

III. PARTIES

6. The Defendant, Merrick Garland, is the Attorney General of the United States of America and is sued in his capacity as head of a department in the executive branch of the Federal Government.

7. Mr. Berry was a Special Agent of the Federal Bureau of Investigation and worked for the FBI in New Mexico at all times relevant to this lawsuit.

IV. FACTS

8. The FBI hired Mr. Berry on or around July 10, 2017.

9. Before joining the FBI, Mr. Berry served in the United States Marine Corps for 12 years. His military service included two combat tours in Afghanistan.

10. Mr. Berry is black. His wife, Alyson Berry, is also an FBI agent and is white.

11. On or around June 1, 2020, the FBI detailed Mr. Berry to an FBI unit tasked with responding to a Black Lives Matter (BLM) protest following George Floyd's murder. The FBI charged this unit with walking the street in downtown Washington D.C. in close proximity with protestors. While walking the street, the FBI unit, of which Mr. Berry was a part, "took a knee" in close proximity to BLM protesters. It is common knowledge that "taking a knee" is a way to express opposition to the killings of unarmed black men by law enforcement. It is also a legally protected activity as courts have long held "protesting against discrimination by industry or by

society in general" is an act for which an employee cannot be retaliated against. *See Williams v. Smithsonian Inst.*, 177 F. Supp. 3d 331, 335 (D.D.C. 2016) (citing *Sumner v. United States Postal Service*, 899 F.2d 203, 209 (2d Cir. 1990)).

12. Following that act of opposition to race discrimination in America, Mr. Berry experienced retribution at the hands of both peers and superiors at the Bureau.

13. During the week of BLM protests in Washington, D.C., Mr. Berry learned that the FBI was transferring him to the New Mexico field office.

14. In June 2020 Mr. Berry had a telephone conversation with Bill Hall, a Supervisory Special Agent (SSA) located in the Bureau's Farmington, New Mexico field office. This was Mr. Berry's first lengthy conversation with Mr. Hall.

15. During this conversation, Mr. Hall (presumably unaware of Mr. Berry's skin color) said that all BLM protestors should "be killed" and that Mr. Berry should not consider Farmington if he does not "vote right".

16. Mr. Berry immediately told SSA [REDACTED], SA [REDACTED], and SA [REDACTED] about Mr. Hall's murderous ideation that all BLM protestors should be killed.

17. More conversations with Mr. Hall ensued. That same month (June 2020) Mr. Hall told Mr. Berry that he would not allow a married couple to come to Farmington and would change Mr. Berry's orders if that was the case. On or around this time, Mr. Berry received a separate correspondence from SA [REDACTED] (a white female and personal favorite of Mr. Hall, who Mr. Hall dubbed his "PT Princess") stating that Mr. Berry should go to Pierre, South Dakota instead and that Mr. Berry and his wife were not welcome at the New Mexico field office. Undeterred by the stark racism, Mr. Berry made clear that he would be coming no matter what.

18. On or around June 2020, SA [REDACTED] told Mr. Berry in confidence that FBI Albuquerque Assistant Special Agent in Charge (ASAC) [REDACTED] (a white female implicated in a separate federal retaliation lawsuit against another FBI agent (who also happens to be a military combat veteran)) disagreed with Mr. Berry's wife and him going to the same office and thought of it as "unfair." SA [REDACTED] reminded Mr. Berry that ASAC [REDACTED] was going to be Mr. Berry's ASAC, implying that he should be careful.

19. Mr. Berry arrived at the Farmington RA on or around August 10, 2020.

20. During his first week at the Farmington RA, Mr. Berry walked into Mr. Hall's office to introduce himself, Mr. Hall responded with a disgusted look on his face as if the mere presence of a black man repulsed him.

21. [REDACTED], an employee of the Navajo Nation, would later state that Mr. Hall was disgusted with interracial relationships. As an employee of the Navajo Nation, [REDACTED] worked as a medical investigator and coroner. She worked closely with FBI Special Agents on the reservations, investigating causes of death and aiding investigators in determining whether a person was a victim of a crime. She had over a decade of experience working with Mr. Hall. Around Mr. Berry's arrival at the Farmington RA, Mr. Hall openly discussed with Ms. [REDACTED] that Mr. Berry was going to be a problem for the office because of him being interracial. Mr. Hall further expressed disappointment in his daughter because she was dating a "black cowboy" while attending college. He continued to espouse his racist ideology by stating that any good parent should be against their daughter dating outside of their race. He made his position clear: black and white people should not get married.

22. In September 2020, SA [REDACTED] told Mr. Berry's squad that Mr. Berry was one of the many kneeling agents in Washington DC during the BLM protests. The squad ([REDACTED])

█████, █████, █████, and Task Force Officer (TFO) █████) were enraged and stated that Mr. Berry should have been fired.

23. At a squad breakfast around August or September 2020, Mr. Hall told Mr. Berry (unsolicited) in front of █████ that "black people need to get over racism." Mr. Hall regularly made derogatory comments during these events. Mr. Berry told Mr. Hall that it would be easy to "get over" racism if people like Mr. Berry's grandparents didn't disown his mom for dating a black man, or if Mr. Berry's in-laws didn't disown Alyson Berry for dating Mr. Berry for a year and a half. Mr. Hall replied that Mr. Berry should have concealed his race (as if it were a source of shame) from Alyson Berry's parents and told them he is white.

24. Between August and November 2020, SA █████ told Mr. Berry in front of TFO █████ that "a little birdie" told him Mr. Berry's family would never see the ski resort, insinuating Mr. Berry would be too overworked by Mr. Hall to have time off or leave the area.

25. On or around November 2020, FBI Agents from Albuquerque assisted the Farmington RA with a law enforcement operation. While staying overnight in Farmington, one of the assisting Agents, SA █████, went out with a few Agents from Farmington including SA █████. The next day, SA █████ told Mr. Berry that SA █████ talked negatively about Mr. Berry, and he should watch out for her.

26. Later that same week, SA █████ asked Mr. Berry if he was part of "Kneel Team Six"—an apparent mocking of the FBI unit who knelt with BLM protestors by comparing/contrasting them to U.S. Navy SEAL Team 6—and that any of those agents that knelt during the BLM protests should have been "kicked out of the FBI."

27. Mr. Berry's wife, SA Alyson Berry, checked into the Farmington, NM RA in December 2020. Mr. Hall told Mr. Berry that SA Berry would likely quit within the first week, so he wasn't going to bother getting her an FBI-issued vehicle.

28. Both Mr. Berry and SA Berry were assigned to work cases on a local Indian reservation. Yet neither were initially provided with ballistic vests that were customarily issued to agents assigned to such reservation duty. And SA Berry was only able to get a vest by happenstance after running into a firearms instructor one year later who was shocked she wasn't issued a vest.

29. A few weeks after arriving at the Farmington RA, SA Alyson Berry and Mr. Hall drove to Albuquerque. During this ride Mr. Hall made the following points to SA Berry:

- a. Children need their mothers at home. Not "parents," not "fathers," not "caregivers," but specifically "mothers." Mr. Hall went on to say that his wife was a stay-at-home mother, and his daughters would do the same.
- b. There is no reason for blacks or minorities to speak out against racism because in this day-in-age, it simply doesn't exist. To this, SA Berry responded with what she learned as a realtor regarding generational wealth not being available to minorities because of historical discriminatory lending practices and redlining (where minorities are kept within certain boundaries and investors are discouraged from spending money on real estate in those areas). Mr. Hall responded that it is not an issue "now" and people need to "get over it." Mr. Hall, apparently troubled by historical facts, ended that line of the conversation.
- c. Gays commit acts of passion and will not hurt their lover's face. Although Mr. Hall could provide absolutely no evidence to suggest there was any scientific backing to this comment, he justified his statement as a product of "training."
- d. The Boy Scouts were a fine organization until they let the gays in.
- e. It is the fault of Native American mothers on the Apache Reservation that their daughters get sexually molested because they let it happen.

30. From that point on, while other agents would sometimes take three-hour lunch breaks during travel to their residences in other cities, SA [REDACTED] and Mr. Hall focused on every action Mr. Berry and SA Berry made. Since Mr. Berry was ostracized following his check in, he did not want SA Berry to suffer the same fate. Mr. Berry began showing SA Berry all the offices she would be traveling to during the course of her duties. When SA Montgomery found

out, she reached out to Mr. Hall. Mr. Hall then banned Mr. Berry and SA Berry from traveling in the same vehicle together for work-related matters, despite being assigned to share an issued vehicle and the standard protocol of having a second Agent present when possible.

31. In March 2021, SA [REDACTED] made an “anonymous” complaint against Mr. Berry in which SA [REDACTED], among other things, falsely accused SA Berry of going to Telluride, Colorado on a government paid house hunting trip and accusing the Berrys of claiming House Hunting Trip (HHT) funds when the Berrys had already purchased a house.

32. Mr. Berry did not go to Telluride, Colorado in conjunction with any house hunting trip.

33. The Bureau knew that Mr. Berry did not go to Telluride, Colorado in conjunction with any house hunting trip.

34. The Bureau knew that SA [REDACTED] made the false allegation that Mr. Berry went to Telluride, Colorado in conjunction with the house hunting trip yet SA [REDACTED] (who is white) has not been disciplined for making this false report.

35. Upon information and belief, Mr. Hall either encouraged or directed SA [REDACTED] to make the above-referenced complaint against Mr. Berry.

36. Mr. Hall knew at least one person who worked in the department charged with investigating SA [REDACTED]’s complaint against Mr. Berry.

37. In March 2021 Mr. Berry received notification that he was being investigated for misusing travel benefits.

38. On or around April 2021, Mr. Berry made verbal requests to attend SWAT and Firearm Instructor tryouts. Mr. Hall denied Mr. Berry’s request, stating that he “did not allow agents to be on SWAT.” Despite this statement, Mr. Hall allowed SA [REDACTED] (white) to be

a member of SWAT. When Mr. Berry asked Mr. Hall about the Firearms Instructor tryouts, Mr. Hall stated that Mr. Berry was too “new” to attend that school. Again, acting counter to his verbal statements, Mr. Hall allowed SA [REDACTED] (white) to attend Firearms Instructor Training despite being with the field office for less than a year.

39. On April 21, 2021, FBI employee Deputy Unit Chief [REDACTED], [REDACTED] [REDACTED], effectively cleared Mr. Berry of any wrongdoing by writing, in relevant part:

[REDACTED]

40. Mr. Berry would subsequently learn that another person investigating SA [REDACTED] complaint against Mr. Berry (SA [REDACTED]) cleared Mr. Berry of wrongdoing but was overridden by [REDACTED] of FBI Headquarters.

41. When the Berrys traveled to Farmington (in July 2020 as part of the trip that SA Montgomery complained about) there was no “established” home. Nor was SA Berry asked if he had “established” a home.

42. In the March 2021 timeframe, Mr. Hall told SA [REDACTED]’s husband (SA [REDACTED]) that “every black person” in a city where Mr. Hall previously worked “had drugs on them.”

43. Mr. Hall also assisted [REDACTED] (who is white) in navigating an Office of Professional Responsibility (OPR) investigation directed at [REDACTED], who was then a Special Agent in another Indian Country office. SA [REDACTED] disclosed this information to

Farmington RA Agents knowing that it was an OPR offense to discuss an ongoing FBI investigation.

44. Mr. Hall gave Mr. Berry zero assistance in navigating the OPR investigation (and follow-on administrative prosecution of Mr. Berry) that followed SA [REDACTED]'s travel fraud complaint against Mr. Berry.

45. On or around May of 2022, SA [REDACTED] (who would replace Hall as SSA upon Hall's retirement) had his bullet proof vest plate carrier stolen—a self-reportable OPR offense. But Mr. Hall did not discipline or otherwise punish SA [REDACTED] for losing his equipment; instead, Mr. Hall lent him his (Hall's) equipment. Instead Mr. Hall coached SA [REDACTED] to say he ([REDACTED]) had been “overworked” and use that as justification for his failure to secure equipment.

46. SA [REDACTED] and SA [REDACTED] discussed openly that the FBI organization as a whole only cares about hiring minorities and females. This discussion would come up whenever SA [REDACTED]'s police officer associates failed the FBI recruitment process. They both agreed that minorities are only hired based off their background. SA [REDACTED] identified SA [REDACTED], a black female, only graduated the FBI Academy because the class supervisor, a white male, was married to a black female. SA [REDACTED] would further explain that since the class supervisor had the authority to pass or fail a student, that SA [REDACTED] was given a pass due to his romanticism with black females. SA [REDACTED] and SA [REDACTED] regularly discussed this topic throughout the three years Mr. Berry was assigned to Farmington RA and they were not afraid to discuss this openly in front of the other Farmington RA employees.

47. Additionally, SA [REDACTED] had the habit of reporting anything she could about the minorities in the office (and their spouses like SA Berry). For example, SA [REDACTED] reported [REDACTED] and [REDACTED] (Native American) for taking too long of a lunch break,

even though they were given previous permission due to the relationship building with law enforcement partners.

48. On or around May 3, 2021, Mr. Berry submitted an application for Operational Medicine training and received notification that he was selected, alongside SA [REDACTED], to attend the training. Mr. Berry received no further communications about his selection into the training program from Mr. Hall. Mr. Berry decided to take action, reaching out to the Operational Medicine training program manager on or around March 1, 2022, only to find out that Mr. Hall gave his spot on the training program to SA [REDACTED] (white).

49. On or around May 10, 2021, Mr. Hall told the new Victim Specialist, [REDACTED] that he hates Apache Indians during their first meeting. [REDACTED] most recent position was as a social worker from the Apache territory. Mr. Hall then followed up with asking if [REDACTED] was an Apache or Navajo, indicating that it was okay if she was an Apache, but he just “can’t stand them.”

50. On or around May 11, 2021, Mr. Hall told Agents not to tell the custodian, [REDACTED], about a recent FBI job posting, because her daughter was interested in becoming the Operational Support Technician in the FBI Farmington RA. Mr. Hall further identified that [REDACTED] family were Jehovah’s Witness, and he did not want a Jehovah’s Witness working for the FBI.

51. On or around June 2, 2021, Mr. Hall stated (in the presence of three Agents) that SSA [REDACTED] only received the Director’s award because he is gay. Mr. Hall identified that SSA [REDACTED] was a part of a special “ALL GAY” FBI academy class that did not have to pass a single event since they were gay. Mr. Hall went on to state that SSA [REDACTED] enjoys an indefinite waiver for firearms and PFT due to his sexual preference.

52. On or around June 28, 2021, when SA [REDACTED] asked Mr. Hall how he felt about the FBI homepage showing a picture of the Pride Flag, he responded: “It makes me sick to my fucking stomach.”

53. For years Mr. Hall made bigoted comments about pretty much every protected class that came up in conversation. The only group of people that Mr. Hall held in esteem were straight white Christian males, and the occasional white female who somehow avoided drawing his sexist ire. Mr. Hall brazenly made these comments in front of numerous FBI Special Agents. Yet, upon information and belief, no FBI Special Agent (or employee) had the courage to put a stop to his discriminatory animus. Until, however, Mr. Berry came along.

54. On or around August 6, 2021, Mr. Berry submitted a request to Mr. Hall to have him fill out and sign Mr. Berry’s request to attend Relief Supervisor Training. SA [REDACTED] submitted a similar request to Mr. Hall, which Mr. Hall completed and sent on SA [REDACTED]’s behalf within three days. The application window for the Relief Supervisor Training program closed on August 18, 2021. Mr. Hall never completed Mr. Berry’s request and he missed the application window.

55. On or around August 26, 2021, Mr. Berry sent an email to OPR via email address HQ_DIV10_IPU_MAIL@fbinet.fbi about Mr. Hall’s hate speech.

56. On or around September 17, 2021, Mr. Berry sent a follow-up email with additional evidence of Mr. Hall’s hate speech. This report related to Mr. Hall disparaging gay people and lamenting about the “all gay” FBI class. Mr. Berry stood up to Mr. Hall, noting that he (Berry) had a friend (a former Recon Marine and Silver Star recipient) who left the Marines due to similar hate speech. Apparently shocked that decorated combat veteran from an elite branch of the U.S. Armed Services might frown upon such discrimination, Mr. Hall changed the subject.

57. Resolved in his fight against this insidious institutional racism, Mr. Berry then followed up with phone calls to the OPR to check on the status of his complaint.

58. During one of these conversations, an OPR employee told Mr. Berry that if he continued to submit complaints it would start the OPR investigation process all over again so there was no need for Mr. Berry to continue to submit complaints.

59. Sometime after the above-referenced 2021 complaints Mr. Berry asked Mr. Hall if he could go to the Native American Investigations Course but was told “no” only to subsequently learn that [REDACTED] (white) was allowed to attend the course.

60. Indeed, on October 22, 2021, Mr. Berry emailed the FBI Headquarters [REDACTED] [REDACTED], [REDACTED], as follows:

Things are going as usual. Last week, my supervisor described how he was being worked harder than a runaway slave. Every other day it is something homophobic, sexist, xenophobic, or anti-religion towards anything outside Baptist. I stopped sending the complaints to OPR in DC, because I was told it starts the whole process over. If my complaints are viewed as stupid and a waste of everyone's time, then no, I DO NOT need further assistance. As long as I keep to myself and accept the ideologies, then there are no issues.
Respectfully Sent,
Will Berry

61. [REDACTED] is a mental health specialist who provides support to Agents who work child porn and child crime cases, as the horrific nature of those cases generally lead to Agents requiring mental health assistance. All told, Mr. Berry complained to [REDACTED] approximately three times, not about stress relating to investigating criminal activity, but the stress and mental trauma stemming from his struggle with workplace discrimination and retaliation.

62. Although the fact that Mr. Berry made a complaint against Mr. Hall should have remained confidential, sometime in the September 2021 - October 2021 timeframe, someone within the FBI provided Mr. Hall an informal notice about Mr. Berry's complaint.

63. Mr. Hall summoned SA [REDACTED] and TFO [REDACTED] to his office and directed them to read the informal OPR. During this open-door meeting, one of the three uttered Mr. Berry's name and Mr. Hall responded with, "He is a fucking coward".

64. Indeed, multiple times throughout Mr. Berry's two and a half years in Farmington, Mr. Hall bragged about having a close friend at OPR and that any issues that he has with an agent he would just "OPR them."

65. Regarding Mr. Berry's 2021 complaint against Mr. Hall two Supervisory Agents (outside of the Albuquerque division) did interview [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] (a friend of Hall's who shares Hall's extreme right-wing proclivities) and SA [REDACTED] let everyone know that he was being interviewed by "The Rat Squad" referring to the Supervisory Agents interviewing him.

66. These interviews began months after Mr. Berry's 2021 complaint. And the delay in initiating the investigation into Mr. Berry's complaint allowed Mr. Hall to run down the clock and retire (with full taxpayer funded benefits) as opposed to stand to account for his behavior.

67. Mr. Hall bragged about doing an anonymous OPR on SA [REDACTED] because he did not like him and thought the Mormon religion was a cult. Mr. Hall said this in front of SA [REDACTED] and [REDACTED].

68. Although Mr. Berry made two written complaints against Mr. Hall the FBI did not investigate or discipline Mr. Hall.

69. The FBI did, however, investigate the then-anonymous complaint SA [REDACTED] made against Mr. Berry and, following that investigation, attempted to fire Mr. Berry.

70. On or around October 28, 2021, Mr. Berry again submitted an application for the Relief Supervisor Training program. Mr. Hall signed the request a few days after being prompted

again. However, Mr. Hall refused to allow Mr. Berry to attend this training once the program became available.

71. In late January 2022, SA [REDACTED] (an agent based out of Washington DC) transferred to the FBI Albuquerque office. Mr. Berry knew SA [REDACTED] from a mutual friend in Washington D.C. Mr. Berry ran into SA [REDACTED] while visiting the Albuquerque office. Mr. [REDACTED] seemed incredibly standoffish. When Mr. Berry asked SA [REDACTED] “what’s wrong,” he turned around and pulled up a picture on his desktop of all the FBI agents who were kneeling during the BLM protests. [REDACTED] became very angry and told Mr. Berry that he (Berry) did the wrong thing and he (Berry) “should have been kicked out.”

72. Around March 2022, [REDACTED] (a Navajo man) told Mr. Berry that Mr. Hall told him ([REDACTED]) that “all Navajo’s are alcoholics” and that [REDACTED] should “refrain from wearing a mask” during the height of COVID 19—an act that was against the wishes of [REDACTED] village elder.

73. Around May/June of 2022, Mr. Hall told Mr. Berry he had to go to Albuquerque for an entire week to which Mr. Berry replied, “Why does [REDACTED] never have to do anything?” Mr. Hall replied that she “had just got back from a week-long trial” to which Mr. Berry agreed but also added that [REDACTED] “entire family was with her at the hotel, and she bragged about being in the hot tub every day.”

74. Mr. Hall walked away. Then [REDACTED] approached Mr. Berry stating that he hates how Mr. Hall treats Mr. Berry (and his wife) differently. Mr. Berry asked [REDACTED], “why don’t you speak up,” to which he responded, “Bill’s about to retire.”

75. During his time at the Farmington RA, Mr. Berry applied for a primary relief supervisor program. The following day Mr. Hall talked [REDACTED] into applying for the primary

relief supervisor program. Mr. Hall got [REDACTED] through the entire process within 24 hours. It took Mr. Hall months (August – November 2021) to ultimately approve Mr. Berry's application for the relief supervisor program. Mr. Hall refused to allow Mr. Berry to experience being a relief supervisor, so when Mr. Hall's position became open, Mr. Berry did not have the relief supervisor experience [REDACTED] had.

76. [REDACTED] assumed Mr. Hall's SSA duties on or around June 2022. [REDACTED] held a mandatory squad meeting to address the "hurt feelings" over offensive words. [REDACTED] encouraged Agents on the squad to speak with him privately if anyone was offended by "curse words." Mr. Berry, a Marine Corps combat veteran, told [REDACTED] that he could handle rough language, but the glaring issue that needed to be addressed was the toxic environment Mr. Hall created by constantly engaging in racist, sexist, and homophobic rants. Mr. Berry gave the specific example of Mr. Hall plunging a Native American employee into his toxicity on her first day by stating that he hates Apaches. SA Berry then further identified that Mr. Hall's sexist comments about mothers needing to stay at home with the kids instead of being agents extended beyond mere "curse words." At this time, the other employees attending the meeting, which included [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] seemed receptive. After a short pause, [REDACTED] raised her hand and said that she wanted to clarify she only went along with Mr. Hall's comments because she felt she had to, a throwback to the Nuremberg defense of being a simple fellow traveler following the lead of a superior.

77. [REDACTED] regularly invited Mr. Hall to FBI Farmington events even though it was made apparent at [REDACTED] first mandatory squad meeting as supervisor that both the Agents and professional staff in the office agreed Mr. Hall created a poor, if not overtly hostile, work environment.

78. In November 2022, ██████ asked the squad to write up its biggest achievements for the fiscal year. Mr. Berry looked up his arrest statistics whereupon he learned that he had the most arrests in his squad and that his wife had the second most arrests. Nevertheless, ██████ referred the squad's newest agent, ██████, to ██████ and ██████ for advice on working on the reservation or anything else he may have questions about. SSA ██████ (who took over for Mr. Hall upon Mr. Hall's retirement) made this announcement in front of the entire squad.

79. During his time at the Farmington RA, Mr. Berry asked to go to the following training courses: SWAT tryout, Operational Medic, Firearms Instructor, Supervisory Relief Program, and Native American investigation course held by Bureau of Indian Affairs. During his time with the Farmington RA, Mr. Berry was the only agent without any form of outside training or collateral duty.

80. In January 2023, ██████ told SA Berry that ██████ knew the statistical accomplishments for the squad and that Mr. Berry was at the top of the squad as measured by ██████ followed by ██████, ██████, ██████, ██████, and (bringing up the rear) ██████. SA Berry and Mr. Berry were regularly called by the Native American investigators due to the reliability that they had.

81. On or around January 7, 2023, Mr. Berry received a proposed dismissal letter from the FBI for having a house under contract when asking to be enrolled in the relocation program. Although that letter sought to fire Mr. Berry, it oddly noted that a similar offender was only given sixty days suspension to an employee that closed on his house the first day of his house hunting trip.

82. On or around January 8, 2023, Mr. Berry asked [REDACTED] who Mr. Hall's senior level friend was at OPR. [REDACTED] stated that he knew Mr. Hall had a friend in OPR, but he may have retired.

83. On or around January 17, 2023, some Special Agents from the FBI Farmington RA and the Gallup RA went to Buffalo Wild Wings, in Farmington, NM for dinner. Mr. Hall (now retired) attended and proceeded to tell the group that [REDACTED], [REDACTED], and [REDACTED], that Mr. Berry had made complaints against him.

84. At that lunch Mr. Hall let agents at Buffalo Wild Wings know that he (Hall) knew who provided negative remarks. When he got back to the office, SA [REDACTED] laughed about Mr. Hall disclosing these facts in front of [REDACTED]. [REDACTED] called the investigator that interviewed her (and Mr. Berry) and told the investigator that he should not have that information because he elected to retire instead of providing a rebuttal.

85. Upon information and belief, the FBI did nothing to figure out how Mr. Hall knew of the specific allegations against him.

86. On January 24, 2023, SSA [REDACTED] became aware that SA [REDACTED] improperly documented (meaning caused to be disclosed) a source's true name. SA [REDACTED] was never disciplined for causing the source's identity to be possibly compromised.

87. On January 25, 2023, [REDACTED] sent out two emails. One email suspended Mr. Berry's access to FBI spaces and information systems.

88. The second January 25, 2023, email [REDACTED] sent regarded a former FBI special agent name Kyle Seraphin—a "1st amendment rights advocate" who claimed AQ division opened

up investigations without cause. Mr. Seraphin has his own QAnon-esque podcast. However, Mr. Seraphin and been gone from the FBI for over a year.

89. Upon information and belief, [REDACTED]'s supervisors told him to send out access suspension emails regarding Mr. Berry and Mr. Seraphin on the same day so as to insinuate that Mr. Berry and Mr. Seraphin were in cahoots with each other and further discredit Mr. Berry by associating him with Mr. Seraphin.

90. On March 9, 2023, while Mr. Berry's fate regarding the HHT fraud allegation had yet to be decided, SSA [REDACTED] called SA Berry to inform SA Berry that there was a new special agent opening in Farmington—the import being that Mr. Berry's termination was a foregone conclusion thus justifying a job opening.

91. In preparing to appear before the conduct board, Mr. Berry would learn that SA [REDACTED] claimed three FBI agents falsely stated that Mr. Berry went on vacation in Colorado as part of the house hunting trip. None of those agents have been named or disciplined for making a false report.

92. On or around May 3, 2023, Mr. Berry appeared before an OPR conduct board. The board declined to fire him but suspended him for sixty days and informed Mr. Berry of that decision on May 3, 2023.

93. Upon returning to Farmington RA, Mr. Berry's roles and responsibilities were diminished to shredding papers and filing paperwork. Mr. Berry's cases were taken away from him permanently. SA [REDACTED] told Mr. Berry that he received guidance that Mr. Berry was not allowed to do anything which could be testimonial. Mr. Berry asked to become a Technically Trained Agent or an Operational Medic since they were not investigative positions requiring testimony at cases, and those requests were denied.

94. Mr. Berry decided to exercise his exit benefits and transfer to the Honolulu Field Office. After inquiring with the Assistant United States Attorney's Office in Hawaii, and the Staff at the FBI Honolulu office, it was determined the Mr. Berry could still work cases in Honolulu. When Mr. Berry applied for the transfer, the FBI Headquarters Transfer Unit denied his request due to the suspension. Executive management at OPR told Mr. Berry specifically that after his suspension, the transfer would not be affected. To avoid further discrimination, embarrassment, and emotional stress, Mr. Berry resigned from the FBI and became a civilian employee for the United States Army.

95. When SA Berry used the FBI spousal transfer policy to follow Mr. Berry, the FBI Headquarters transfer unit delayed her transfer for over a month and a half. SA [REDACTED] applied for a transfer several weeks after SA Berry. SA [REDACTED] obtained her orders within weeks before SA Berry obtained her orders.

V. CLAIMS

96. Plaintiff re-alleges the above paragraphs.

(Count I – Discrimination on Race and Marital Status)

97. “To establish a prima facie case for racial discrimination, Plaintiff must show: (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) the challenged action took place under circumstances giving rise to an inference of discrimination.” *Duran v. LaFarge N. Am., Inc.*, 855 F. Supp. 2d 1243, 1249 (D. Colo. 2012).

98. Mr. Berry is black and married.

99. Mr. Berry suffered the following adverse employment actions: (a) denial of the numerous training opportunities (b) denial of the ability to travel with SA Berry in the same vehicle for work related purposes, (c) being investigated for HHT related fraud, and (d) delay in

approving Mr. Berry's PRS application (when compared to Mr. Hall's quick approval of SA [REDACTED]'s PRS application) and ultimate denial of SA Berry's request to partake in PRS duties.

100. Mr. Hall's racist tendencies are illustrated not only by his words but also his deeds. SA [REDACTED] (Hall's "PT Princess") caused Mr. Berry to be investigated by the OPR for HHT related fraud. Mr. Hall was aware of the investigation into Mr. Berry but did not help Mr. Berry. It bears repeating that Mr. Berry is black. However, Mr. Hall helped SA [REDACTED]'s (white) husband (SA [REDACTED]) navigate matters associated with an OPR investigation into SA [REDACTED]'s conduct.

101. Additionally, Mr. Hall gave SA [REDACTED] a pass when he ([REDACTED]) lost sensitive equipment whereas he made the conscious decision to not assist SA Berry in responding to the SA [REDACTED] initiated investigation while also denying Mr. Berry's numerous training requests.

102. Mr. Hall also gave SA [REDACTED] favorable assignments and assigned her a lower workload than Mr. Berry (and SA Berry)

103. SA [REDACTED], who (albeit more subtly than Hall) also has less-than-stellar opinions about minorities in the Bureau, evidenced by juxtaposing his decision to not discipline SA [REDACTED] (white) for compromising a source with his decision to terminate Mr. Berry's (black) key job responsibilities following SA Berry's contesting of the OPR investigation into the alleged HHT fraud.

(Count II – Hostile Work Environment)

104. A hostile work environment claim requires proof that "(1) the plaintiff is a member of a protected group; (2) the plaintiff was subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic (in this case, race); and (4) the harassment was

sufficiently severe or pervasive to alter a term, condition, or privilege of the plaintiff's employment and created an abusive working environment.” *Johnson v. Handley*, 604 F. Supp. 3d 1306, 1310 (D. Wyo. 2022).

105. Mr. Berry is Black, a member of a protected class.

106. Mr. Hall subjected Mr. Berry to unwelcome harassment on account of Mr. Berry's race a la saying BLM protesters should “be killed,” telling ██████████ that Mr. Berry was going to be a problem because he was interracial, and telling Mr. Berry that black people need to get over racism,

107. Mr. Hall (and SSA ██████████'s) comments altered the terms and conditions of Mr. Berry's work environment as Mr. Berry not only had to spend his duty day pursuing criminals but do so knowing that his direct supervisor, and that supervisor's heir apparent, regarded him as an interracial problem child who should “be killed” on account of his opposition to black men being killed in the streets.

(Count III – Retaliation)

108. A Title VII retaliation claim has three elements: “(1) [The plaintiff] was engaged in opposition to Title VII discrimination; (2) [the plaintiff] was subject to an adverse employment action; and (3) a causal connection exists between the protected activity and the adverse employment action.” *Moore v. Tulsa*, 55 F. Supp. 3d 1337, 1346 (N.D. Okla. 2014).

109. Mr. Berry opposed race discrimination by (a) taking a knee as part of the protests following George Floyd's murder, (b) making complaints to OPR regarding Mr. Hall's discriminatory behavior directed at Native Americans, gays, and other protected classes.

110. Mr. Berry suffered the following adverse employment actions: (a) the continuation of the Bureau's OPR investigation into the alleged HHT fraud, (b) removal of Mr. Berry's job

duties upon his successful contesting of the Bureau's attempt to fire him on account of the alleged HHT fraud, (c) denial of numerous training requests by Mr. Berry, (d) delay of Mr. Berry's PRS application and then refusal to allow Mr. Berry to take on PRS duties, and (e) non-recognition of Mr. Berry's workplace accomplishments followed by SA [REDACTED]'s decision to assign new duties to the lower performing new agent SA [REDACTED] instead of Mr. Berry, who at the time was the top performing Agent with a wealth of field experience.

VI. PRAYER FOR RELIEF

Mr. Berry respectfully prays for:

- A. Compensation for all injury and damages suffered by Mr. Berry including, but not limited to, economic damages in the amount to be proven at trial including back pay, pre and post judgment interest, negative tax consequences of any award, and general damages as provided by law.
- B. Plaintiff's reasonable attorney, expert fees, and costs, as otherwise provided by law.
- C. For such other and further relief as this Court deems just and equitable.

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure

Respectfully submitted this 15th day of January 2024.

Respectfully submitted,

ROSARIO D. VEGA LYNN LAW OFFICES, LLC

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